

(2023) 06 KL CK 0401

In the High Court Of Kerala

Case No : Writ Petition (C) No. 19575, 22838 Of 2013

K.R. Jayaprakash

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 12-06-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 4(1)
Legal Services Authorities Act, 1987 — Section 22C(7)
National Legal Services Authority (Lok Adalats) Regulations, 2009 — Regulation 17
Kerala State Legal Services Authority Regulation, 1998 — Regulation 33, 39

Citation : (2023) 06 KL CK 0401

Hon'ble Judges : Viju Abraham , J

Bench : Single Bench

Advocate : Aysha Abraham, S.Sarath Prasad, Bimal K.Nath

Final Decision : Disposed Of

Judgement

Viju Abraham, J

1. WP(C) No.19575 of 2013 is filed challenging Ext.P5 award passed by the Lok Adalat in L.A.R. Execution No.293 of 2012 in L.A.R.No.90 of 2008 and for a consequential direction to the Lok Adalat to pass a fresh award, with the consent of the petitioner.

2. The petitioner's property having an extent of 4.20 Ares of land comprised in Sy No.3/1 in Block No.240 of Changanacherry Village was acquired for construction of Changanacherry – Kottayam By-pass as per Section 4(1) Notification dated 20.01.2005. An award was passed by the Land Acquisition Officer on 30.08.2007 fixing the land value at Rs.23,222/- per Are. Dissatisfied with the award, the petitioner filed his objection and the same was referred to the Sub Court for adjudication. The reference court as per Ext.P1 passed an award fixing the land value at the rate of Rs.1,71,255/- per Are and Ext.P2 decree was passed in terms of the award.

3. The petitioner has entrusted the matter with his counsel and the counsel filed an execution petition seeking execution of the decree. While preparing Ext.P3 execution petition, which is numbered as EP No.293 of 2012 in L.A.R.No.90 of 2008, the learned counsel has committed some grave mistake in calculating the amount due to the petitioner. The respondents also did not file any statement with regard to the amount due to the petitioner in the execution petition. In Ext.P3 execution petition, the petitioner had claimed only Rs.13,22,473.44/-, whereas the petitioner was in fact entitled to get Rs.16,54,899.50/-. To substantiate the same, the petitioner has produced Ext.P4 calculation statement. Petitioner submits that the same happened due to some mistake on the part of the counsel in calculating the amount due to the petitioner.

4. While the matter was pending before the execution court, the same was referred to Lok Adalat and in the Adalat Ext.P5 award was passed for an amount of Rs.13,90,800/-. The mistakes in the amount claimed in Ext.P3 could not be traced out since the respondents did not file any statement of accounts. The petitioner was not aware of the settlement reached in the Lok Adalat and he came to know about the same only when he received a copy of the award. When he calculated the amount in terms of the Judgment and decree he realised the mistakes in the amount claimed in Ext.P3. Petitioner has also a case that he has not affixed his signature in the award and therefore Ext.P1 award is non-est in law and cannot be acted upon.

5. Similar contentions were raised by the petitioners in WP(C)No.22838 of 2013 also. They also have a case that in the execution petition only a lesser amount was claimed than that was due to them and when the matter was pending before the execution court, the same was referred to the Lok Adalat and in the Lok Adalat respective awards were passed as Exts.P16 to P20. The petitioners contended that there was huge difference in the amount claimed in the execution petitions and those mistakes could not be traced out as the respondents did not file any statement of accounts and the same could be noticed only when Exts.P16 to P20 awards were received by them. In this case also the petitioners have taken a contention that they have not affixed their signatures in Exts.P16 to P20 awards and therefore the award cannot be acted upon, since the said award is not passed on the consent of the petitioners. The petitioners submitted that admittedly there was mistake in the amount claimed in the execution petitions and the said mistakes could not be corrected at any point of time. Petitioners have a specific contention that an award cannot be passed or drawn in accordance with the settlement, without there being a prior settlement or compromise between the parties and until or unless the parties sign the award drawn in accordance with the settlement, it will not become an executable award. In fact the impugned awards are passed based on a mistaken calculation on the part of the counsel appearing for the petitioners and the respondents are trying to take advantage of their bonafide mistake. Petitioners submitted that if the impugned awards are allowed to remain in force it will seriously prejudice the petitioners and will result in miscarriage of justice. The petitioners further

submitted that if the impugned awards are executed as such, the very purpose of the enactment of the Legal Services Authorities Act will be defeated. The petitioners relying on the judgment in *Moni Mathai v. Federal Bank Ltd.*, 2003 (1) KLT SN 52 (C.No.71) contended that the Lok Adalat shall not take advantage of ignorance of the party and closed their eyes to the legal effects of the terms of settlement.

6. The petitioners submitted that they were not aware of the mistake that has crept in the execution petition and such an incorrect execution petition ought not have been referred to the Lok Adalat for mediation and settlement. Petitioners also submitted that the mistakes on the part of the counsel cannot be used as an opportunity to deny their legitimate claims. The petitioners further contended that the award without their signatures cannot be treated as an executable award as it goes against the provisions of the Section 22C(7) of the Legal Services Authorities Act, 1987 (hereinafter referred to as "Act 1987") and Regulation 33 of the Kerala State Legal Services Authority Regulation, 1998, (hereinafter referred to as "Regulation, 1998") and Regulation 17 of the National Legal Services Authority (Lok Adalats) Regulations, 2009 (hereinafter referred to as "Regulations 2009"). In support of their contentions the petitioners rely on the judgment in *Mary Gomas and Another v. Vaitus and Others*, 2020 KHC 829.

7. Counter affidavits have been filed by the second respondent in both these cases mainly contending that the amount in the impugned awards were arrived at after the settlement between the parties and further that the learned counsel appearing for the petitioners in the said proceedings have also affixed their signatures in the impugned awards. It is also submitted that the State has deposited the amount as settled in the award and the said amount has been withdrawn by the petitioners and thereafter the petitioners cannot turn around and say that the impugned awards are non-est in law. Learned Government Pleader further submitted that the counsel appearing for the petitioners before the Lok Adalat has affixed their signature in the award and relying on Regulation 39 of the Regulation 1998 (Kerala), the appearance of lawyer on behalf of the parties at the Lok Adalat is not barred and therefore the signature of the lawyer is sufficient to validate the award. To the said contention, the learned counsel for the petitioners would submit that in these writ petitions they have sought by way of an interlocutory order, permission to withdraw the amount deposited in the execution court in the respective cases and that only when these writ petitions were pending consideration, the petitioners had withdrawn the amount deposited. Further it is contended that even though the amount deposited was withdrawn by the petitioners, the claim of the petitioners is more than what is now deposited by the State, which happened due to a miscalculation of the amount while filing the execution petition. Petitioners submitted that technicality shall not stand in the way of rendering substantial and complete justice to the parties and the respondent- State shall not be given an opportunity to take advantage of the bonafide mistake on the part of the petitioners while filing the execution petition.

8. I have heard the counsel appearing on both sides.

9. The question to be considered in these writ petitions is as to whether the impugned orders in both the writ petitions ie., the awards passed by the Lok Adalat could be set aside upholding the contention taken by the petitioners that they have not signed the awards and therefore the awards are non executable. Section 22C(7) of the Act 1987 speaks about cognizance of cases by the Permanent Lok Adalat which reads as follows:

Section 22C. Cognizance of cases by Permanent Lok Adalat.-

xxxxx xxxxx xxxxx

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(emphasis supplied)

It is profitable to refer Regulation 33 of the Regulation 1998.

Regulation 33: Procedure for effecting compromise or settlement at Lok Adalat-

(1) Every Award of the Lok Adalat shall be signed by the parties to the dispute and the panel constituting the Lok Adalat.

(2) The original Award shall form part of the judicial records and a copy of the Award shall be given to each of the parties free of cost duly certified to be true by the panel constituting the Lok Adalat.

(emphasis supplied)

In the particular context, it is also profitable to refer to the Regulations 2009. Regulations 2009 speaks about the procedure for conduct of Lok Adalat by the State or District or Supreme Court or the High Court Legal Services Committees and Regulation 17 deals with awards. Relevant portion of Regulation 17 reads as follows:

17.Award- (1) Drawing up of the award is merely an administrative act by incorporating the terms of settlement or compromise agreed by parties under the guidance and assistance from Lok Adalat.

(2) When both parties sign or affix their thumb impression and the members of the Lok Adalat countersign it, it becomes an award (see a specimen at Appendix-1) Every award of the Lok Adalat shall be categorical and lucid and shall be written in regional language used in the local Courts or in English. It

shall also contain particulars of the case viz., case number, name of Court and names of parties, date of receipt, register number assigned to the case in the permanent Register (maintained as provided under Regulation 20) and date of settlement. Wherever the parties are represented by counsel, they should also be required to sign the settlement or award before the members of the Lok Adalat affix their signature.

(emphasis supplied)

10. Section 22C(7) mandates that when a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist element of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned. Regulation 33 of the Regulation 1998 also specifically mandates that every award of the Lok Adalat shall be signed by the parties to the dispute and also the panel constituting the Lok Adalat. Similarly Regulations 2009 also says about affixing the signature of the parties to the settlement as well as their lawyers.

11. Therefore in view of Section 22C(7) of the Act, 1987 and Regulation 33 of the Regulation, 1998 and Regulation 17 of the Regulations, 2009, both the parties shall affix their signatures and when the parties are represented by counsels they shall also affix their signatures. Therefore, the party mentioned in the Act and the Regulations can only be the parties to the settlement and admittedly petitioners have not affixed their signatures in the impugned award. This Court in Mary Gomas's case (supra) has considered a similar issue and held that when the award passed by the Lok Adalat is not signed by all the parties to the suit, the same will not apply to the parties, who did not sign the award. This Court in *Leela v. National Insurance Co.Ltd.*, 2008(1) KLT 705 had held that when the award is not signed by the parties, the award is not binding on them. A similar view was taken in *Bal Reddy v. Taluka Legal Services Committee, Narayanapet and Others*, 2012 KHC 2245 and also by this Court in WP(C) No.27467 of 2020. In the light of the above it is without any doubt that the impugned award which does not contain the signatures of the petitioners cannot be said to be valid in the eye of law. Yet another reason for this Court to take such a stand is the case of the petitioners that in the calculation of the amount in the execution petition there occurred some bonafide mistake whereby the amount claimed was substantially lower than what they are entitled for. The said mistake has not come to the notice of the petitioners also for the reason that no calculation statement was submitted by the respondents. The calculation statements produced along with the counter affidavits in these cases are all prepared after the filing of these writ petitions. In such a circumstance, going by the averments of the petitioners in these writ petitions, if the said awards are

allowed to be executed as such, it will cause substantial prejudice to the petitioners, who are ordinary people claiming amounts by way of compensation for land acquired from them. Accepting the awards impugned in this writ petitions will result in a situation where the State takes an undue advantage of the mistake committed by the petitioners or their counsel. The Apex Court in *The Trustees of Port of Bombay v. The Premier Automobiles Ltd and Another*, (1974) 4 SCC 710, has held as follows:

"65. We are of the view, in reiteration of earlier expression on the same lines, that public bodies should resist the temptation to take technical pleas or defeat honest claims by legally permissible but marginally unjust contentions, including narrow limitation. In this and similar cases, where a public carrier dissuades private parties from suing by its promises of search for lost articles and finally pleads helplessness, it is doubtful morality to non-suit solely on grounds of limitation, a plaintiff who is taken in by seemingly responsible representation only to find himself fooled by his credibility. Public institutions convict themselves of untrustworthiness out of their own mouth by resorting to such defences."

(emphasis supplied)

12. Another contention taken by the learned Government Pleader relying on Regulation 39 of the Regulation 1998 is that as lawyers are permitted to appear on behalf of the clients and since the respective lawyers who have appeared for the petitioners before the Lok Adalat have affixed their signature, this could be taken as a consent on the part of the petitioners to the award passed by the Lok Adalat. Petitioners have a specific case that they have not signed the awards impugned and therefore the same is not based on the consent of the petitioners. The question to be considered is as to whether affixture of the signature by the lawyer in the award could be binding on the petitioners. I have already referred to the provisions of the Regulations 2009 which specifically mandates that both parties and the members of the Lok Adalat shall affix their signature then only it becomes an award. Regulation 17 further mandates that wherever the parties are represented by counsel they should also be required to sign the settlement or award before the members of the Lok Adalat affix their signature and therefore it is incumbent that both the parties as well as the lawyers should affix their signature. Therefore signature of the lawyer alone in the award cannot validate the terms of the settlement as per the award. The Apex Court has considered the impact of a wrong concession given by a lawyer on the parties. The Apex Court in *Himalayan Coop. Group Housing Society v. Balwan Singh and others*, (2015) 7 SCC 373 held that a wrong concession/statement/admission/compromise/settlement made without obtaining instructions/authority from the clients will not bind on the client. A similar view was reiterated by the Apex Court in *Kirti and another v. Oriental Insurance Company Limited*, (2021) 2 SCC 166 which held that any concession of law made by counsel would not bind the parties as an advocates cannot throw away legal rights or enter into arrangements contrary to law. In view of the specific provision in Regulation 17

as stated above and in the light of the judgments above quoted, I am of the opinion that the contention of the learned Government Pleader that since the lawyers have affixed his signature in the awards that by itself cannot validate the award or make the petitioners bound by the awards.

13. This Court in *Krishnakumari v. Venugopal*, 2005 (2) KLT 185 has held that if the award passed by the Lok Adalat does not satisfy any of the provisions of the Act or Regulations or principles of natural justice, then the same could be interfered invoking powers under Article 226/227 of the Constitution of India. Going by the averments in these writ petitions, due to an inadvertent mistake that happened while filing the execution petition, the actual amount was not claimed and only a lesser amount could be claimed and therefore if the impugned awards are allowed to remain as such without any further remedy available by the petitioners, I am of the opinion that that will result in traversity of law which is not intended by the legislation. Admittedly, the petitioners have not signed the impugned awards and going by the averments of the petitioners in these writ petitions, apparent mistake has happened at the time of filing the execution petition. In view of the above factual situations, I am of the opinion that the impugned awards are liable to be set aside. Therefore, Ext.P5 award in WP(C) No.19575 of 2013 as well as Exts.P16 to P20 awards in WP(C) No.22838 of 2013 are set aside with a direction to the execution court to re-open and re-consider L.A.R.Execution No.293 of 2012 in L.A.R.No.90 of 2008 in WP(C) No.19575 of 2013 as well as L.A.R.Execution No.301 of 2012 in L.A.R.No.85 of 2008, L.A.R.Execution No.294 of 2012 in L.A.R.No.91 of 2008, L.A.R.Execution No.303 of 2012 in L.A.R.No.97 of 2008, L.A.R.Execution No.295 of 2012 in L.A.R.No.4 of 2009, and L.A.R.Execution No.304 of 2012 in L.A.R.No.8 of 2009 in WP(C) No.22838 of 2013 and pass appropriate orders therein in accordance with law after affording an opportunity to the petitioners as well as the respondent- State to defend their case. It is also made clear that the execution court will give due credit to the amount already paid to the petitioners as per the awards impugned herein, while re-considering the matter as directed above.

With the above said directions, the writ petitions are disposed of.